

1 Jerry C. Carter (NSB 5905)  
2 jerry@sierracrestlaw.com  
3 SIERRA CREST BUSINESS LAW GROUP  
4 691 Sierra Rose Drive, Suite B  
5 Reno, Nevada 89511  
6 Telephone: (775) 448-6070  
7 Facsimile:  
8 *Counsel for Defendants and Counterclaimant*

9 UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF NEVADA

11 FRED HOLABIRD, an Individual,

12 Plaintiff,

Case No. 3:14-cv-00262-HDM-CBC

13 vs.

14 DONALD H. KAGIN, an individual, et al.,

15 Defendants.  
16 \_\_\_\_\_/

**STIPULATION AND ORDER  
FOR APPROVAL OF  
SUPERSEDEAS BOND AND FOR  
STAY OF EXECUTION**

17 KAGIN'S INC., a California corporation,

18 Counterclaimant,

19 vs.

20 FRED HOLABIRD,

21 Counter-Defendant.  
22 \_\_\_\_\_/

23 Plaintiff Fred Holabird ("Plaintiff") and Defendant/Counterclaimant Kagin's, Inc. and  
24 Defendants Donald Kagin, Adam Kagin, and Holabird-Kagin Americana, Inc. (collectively,  
25 "Defendants"), by and through their respective undersigned counsel, pursuant to Federal Rule of  
26 Civil Procedure 62(b) and LR 65.1-3, hereby stipulate as follows:

27 WHEREAS, the United States District Court for the State of Nevada entered its Judgment  
28 in a Civil Case (the "Judgment") on April 17, 2019, in favor of Plaintiff, and against Defendants;

WHEREAS, under the Judgment, Defendants are liable for \$600,215.10 including costs  
and attorneys' fees;

WHEREAS, Defendants filed a Notice of Appeal of the Judgment against them with the  
Ninth Circuit Court of Appeals (Case No. 19-15982) on May 7, 2019 (ECF No. 255);

1 WHEREAS, the parties to the judgment have previously stipulated to the posting of a bond  
2 in the amount of \$649,000 staying execution of the Judgment against Defendants during the  
3 pendency of the appeal;

4 WHEREAS, a true and correct copy of Defendant's Undertaking for Appeal is attached  
5 hereto as EXHIBIT 1; and

6 WHEREAS, the parties agree to stay execution of the Judgment against Defendants  
7 pending the exhaustion of all appellate remedies, including any review by the Ninth Circuit Court  
8 of Appeals;

9 NOW THEREFORE, Plaintiff and Defendants hereby stipulate as follows:

- 10 1. The Undertaking for Appeal attached hereto as EXHIBIT 1 is approved.
- 11 2. Execution of the April 17, 2019 Judgment against Defendants is and shall be stayed  
12 pending the exhaustion of all appellate remedies, including any review by the Ninth  
13 Circuit Court of Appeals.
- 14 3. Counsel for Defendants will hold the original Undertaking for Appeal pending the  
15 exhaustion of all appellate remedies, including any review by the Ninth Circuit Court of  
16 Appeals, after which counsel for Defendants will turn the original Undertaking for  
17 Appeal over to counsel for Plaintiff upon written demand if Plaintiff has prevailed on  
18 appeal.
- 19 4. The return of goods or items by Plaintiff to Defendants as set forth in the Report and  
20 Recommendation of U.S. Magistrate Judge filed December 18, 2018 (ECF No. 234), in  
21 footnote 3 on page 18, is not stayed.

22 DATED this 31st day of May, 2019.

23 BOWEN HALL  
24 Counsel for Plaintiffs and Counterdefendant

25 By: /s/ Dan C. Bowen  
26 DAN C. BOWEN  
27 555 South Center Street  
28 Reno, NV 89501

1 DATED this 31st day of May, 2019.

2 LAW OFFICES OF JERRY CARTER, P.C.  
3 Counsel for Defendants and Counterclaimant

4 By: /s/ Jerry C. Carter

5 JERRY C. CARTER  
6 201 West Liberty Street, Suite 200  
7 Reno, Nevada 89501

8 **ORDER**

9 Based on the Stipulation of the parties, and good cause appearing therefore, it is hereby  
10 ordered as follows:

- 11 1. The Undertaking for Appeal attached hereto as EXHIBIT 1 is approved.
- 12 2. Execution of the April 17, 2019 Judgment against Defendants is and shall be stayed  
13 pending the exhaustion of all appellate remedies, including any review by the Ninth  
14 Circuit Court of Appeals.
- 15 3. Counsel for Defendants will hold the original Undertaking for Appeal pending the  
16 exhaustion of all appellate remedies, including any review by the Ninth Circuit Court  
17 of Appeals, after which counsel for Defendants will turn the original Undertaking for  
18 Appeal over to counsel for Plaintiff upon written demand if Plaintiff has prevailed on  
19 appeal.
- 20 4. The return of goods or items by Plaintiff to Defendants as set forth in the Report and  
21 Recommendation of U.S. Magistrate Judge filed December 18, 2018 (ECF No. 234),  
22 in footnote 3 on page 18, is not stayed.  
23

24 Dated this 31st day of May, 2019.

25  
26 

27 UNITED STATES DISTRICT JUDGE  
28

**Holabird vs Kagin**

Case No. 3:14-cv-00262-HDM-CBC

**STIPULATION AND ORDER FOR APPROVAL OF SUPERSEDEAS BOND AND  
FOR STAY OF EXECUTION**

**Exhibit Index**

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Number of Pages</u>
1	Undertaking for Appeal	3

# **EXHIBIT 1**

# **EXHIBIT 1**

# U.S. Specialty Insurance Company

THE UNITED STATES DISTRICT COURT, DISTRICT OF Nevada

FRED HOLABIRD,

Plaintiff,

v.

DONALD KAGIN, et al.,

Defendants

No. 3:14-cv-00262-HDM-CBC

UNDERTAKING FOR APPEAL

WHEREAS, the named Donald Kagin desire(s)  
to give undertaking for Appeal of Court Order entered on April 17, 2019  
as provided by Rule 62 of the Federal Rules of Civil Procedure.

NOW, THEREFORE, the undersigned surety, does hereby obligate itself, jointly and severally to Fred Holabird

under said statutory obligations in the sum of Six Hundred Forty Nine Thousand and 00/100

Dollars (\$ 649,000.00 ).

IT IS FURTHER AGREED by the Surety, that in case of default or contumacy on the part of the Surety, the Court may, upon notice to it of not less than ten days, proceed summarily and render judgment against it in accordance with their obligation and award execution thereon.

Signed, sealed and dated this 28th day of May, 2019.

BOND NO. 1001075823

PREMIUM: 9,735.00

BY:

  
Daniel Huckabay

Attorney-in-fact

U.S. Specialty Insurance Company  
801 S. Figueroa Street, Suite 700  
Los Angeles, CA 90017  
310-649-0990

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.


State of California  
County of Orange )

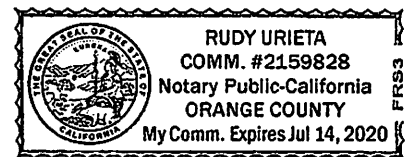
On May 28, 2019 before me, Rudy Urieta, Notary Public  
(insert name and title of the officer)

personally appeared Daniel Huckabay,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)  
Rudy Urieta



**POWER OF ATTORNEY**  
**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY**  
**UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

**Daniel Huckabay, Arturo Ayala, Dwight Reilly, Shaunna Rozelle Ostrom or Frank Morones  
of Orange, California**

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed \*\*\*\*\* Twenty Million \*\*\*\*\* Dollars (\$ \*20,000,000.00\* ). This Power of Attorney shall expire without further action on November 3, 2019. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

*Be it Resolved*, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

*Attorney-in-Fact* may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

*Be it Resolved*, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1st day of November, 2016.

**AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY**  
**UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY**

Corporate Seals



By:

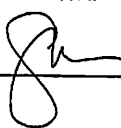
  
**Daniel P. Aguilar, Vice President**

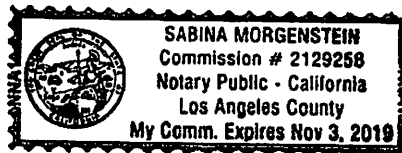
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles SS:

On this 1st day of November, 2016, before me, Sabina Morgenstein, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature  (Seal)



I, Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 28th day of May, 2019.

Corporate Seals

Bond No. 1001075823  
Agency No. 8472



  
**Kio Lo, Assistant Secretary**